

22 November 2017

ASIC Enforcement Review
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email only:

ASICenforcementreview@Treasury.gov.au

In Word and PDF formats

Dear Colleagues

ASIC Enforcement Review: Position and Consultation Paper 8 (Paper) - ASIC's Directions Powers: Supplementary Submission

We refer to our submission of 20 November 2017 in relation to this topic. We have one additional comment we would like to make and ask that this be treated as supplementary to our submission. The comment is this—existing and proposed regulator directions powers are quite circumscribed and thus, if the proposal concerning ASIC directions powers proceeds, we would anticipate there would be further consideration and discussion of this point. For example—

1. The *Banking Act 1959 (Cth.)* (**BA**) in Division 1BA sets out APRA's power to issue directions to certain bodies corporate. The power may be exercised, for example, if APRA has reason to believe that such body corporate has contravened a provision of the BA or *the Financial Sector (Collection of Data) Act 2001(Cth.)* or is likely to contravene a provision of these items of legislation. An alternative source of the power is where the direction is necessary in the interests of:
 - (a) If, the entity is an ADI under the BA—depositors of the ADI;
 - (b) If, the entity is an authorised NOHC under the BA—depositors of any ADI that is a subsidiary of the NOHC.
2. The *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017* (**Member Outcomes Bill**) is couched in similar terms (with

appropriate modifications for the context) to section 11CA of the BA and section 104 of the *Insurance Act 1973 (Cth)*.

3. The *Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Bill 2017* follows a similar theme in relation to proposed amendments to APRA's directions powers in respect of affected entities, ie, specified circumstances must be met.
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Should you have any questions, please contact the writer on 02-9299 3022.

Yours Faithfully

A handwritten signature in blue ink that reads "Paul Callaghan". The signature is written in a cursive, flowing style.

Paul Callaghan

General Counsel